

MEMORANDUM FOR Mr. Don Mikko, Chief, Firearms Branch, CILA-FA

SUBJECT: Notice of Proposed 45-day Suspension

1. I am proposing to suspend you from your position of Chief, Firearms Branch, GS-0301-14 for Conduct Unbecoming a Management Official and Granting a Preference not Authorized by Law. The suspension recommendation is 45-days. This is in accordance with Army Regulation 690-700, Chapter 751, Discipline, as the minimum disciplinary action which I feel is needed to promote the efficiency of the service. If affected, this suspension will not take place sooner than 30 days following your receipt of this memorandum.

This action is being based on an AR 15-6 Investigation initiated on 5 November 2010, to investigate the facts and circumstances surrounding allegations of improper conduct concerning you with respect to hiring practices within the US Army Criminal Investigation Laboratory, Firearms Branch. A thorough investigation of the circumstances surrounding the alleged allegations has been completed, and a copy of the investigation was provided to your attorney. This proposed suspension is based on the following reasons and specifications:

2. Background.

a. You are the Chief, Firearms Branch of the US Army Criminal Investigation Laboratory (USACIL). As part of your duties I expect you to hire examiners in your branch and make recommendations to hire the best qualified in your discipline.

b. In 2008, the USACIL was expanding its services to create a unit, the Reachback Operations Center (RBOC), which would assist commanders in deployed operations. These personnel were to become deployed examiners who could provide prompt laboratory analysis in the field and support forensic requirements from a distance, as well. Six firearms and toolmark examiners were to be hired. The positions were term positions. Because these were term positions and fully qualified firearms examiners are difficult to hire, the USACIL was prepared to accept less than fully qualified personnel.

c. The applicants for the position were to be evaluated by you and Mr. Doyne with recommendations given to me for selection.

d. In July 2008, you ranked Mr. Black as the 5th rated applicant over numerous others. This selection was for firearms examiners. CPOC determined that most of the recommended applicants did not qualify to be considered for firearms examiner positions. They were qualified to compete for technician positions. In an effort to meet mission, it was decided to consider hiring technicians and training them appropriately. To accommodate this decision, a second

ranking was conducted 7 September 2008. At that time you rated Mr. Black as the 2nd highest rated applicant ahead a number of others better qualified.

e. Mr. Black is manifestly less qualified than the other candidates. Any reasonable manager would come to the same conclusion. Your recommendation was so egregious and such a departure from the standards expected of a manager that it was contrary to the efficiency of the service and disciplinary action is appropriate.

f. In January 2010, during your FY09 NSPS final counseling session and initial FY10 counseling we discussed the problems with RBOC hiring and in the memo summarizing our meeting it reads in 2.a. "Selection of the RBOC FA examiners (Oct 09) [sic Oct 08] required my frequent intervention/redirection of the effort because you did not apply the candidate standards I identified."

g. In July 2009, the USACIL began a hiring action for a full time Firearms and Toolmark examiner. Seeking the broadest coverage, the announcement was advertized as a 301, Miscellaneous Administration and Program Series and as a 1301, General Physical Science series. From these two announcements I wanted you to identify the best possible candidate for the position.

h. You were aware of the USACIL goal to have all the disciplines science based and a degree in science was preferred. Additionally, the announcement required that the applicant was to have worked as a Firearms and Toolmark examiner the last 12 months.

i. The list you gave me indicated that Mr. Flater declined the position and that Mr. Bell was the next best qualified candidate. You recommended him for selection.

j. Mr. Bell is clearly not one of the best candidates from those referred. In fact, if objectively rated, he would be one of the least qualified of those referred. The firearms and toolmark knowledge he has you taught him in preparation for deployment. He had no experience examining evidence as a firearms and toolmark examiner. Mr. Bell was, and still is, in training.

k. Of the other candidates that were referred, you rated fully qualified examiners, many with degrees in science, and some with masters degrees below Mr. Bell. You passed over candidates with many years of experience doing firearms casework, some certified by an external certification body, and work history in an accredited forensic laboratory.

l. Mr. Bell is manifestly not the best candidate for the position. Your recommendation is contrary to the expectations of a senior manager in the USACIL. Your recommendation goes beyond poor judgment. It shows a willful bias and a disregard for merit principles. You ignored or minimized the qualifications of other applicants and gave an unlawful advantage to Mr. Bell. This is despite guidance provided and agreement on the qualifications we were looking for in a successful candidate, and direction I provided on June 29, 2009 in your FY09 interim assessment that reads "Greater emphasis needs to be placed on filling your FT [full-time] firearms vacancy with a well qualified, experienced candidate." The issue is even more serious because of several discussions had about Mr. Black not being one of the best candidates for an RBOC position.

Your failure to follow guidance in hiring was noted in your FY09 evaluation (appraisal year 2010), and was part of the basis for your "Needs Improvement – 2 rating" in Objective 4 that year. As such, your recommendation is a significant departure from the standards expected of you and is contrary to the efficiency of the service and disciplinary action is appropriate.

3. Charge I: Conduct Unbecoming a Management Official.

a. Specification 1. In July 2008, you improperly placed Mr. Black as the fifth rated candidate out approximately 17;

b. Specification 2. In September 2008, you improperly placed Mr. Black as the second rated candidate ahead of numerous others.

c. Specification 3. In October 2009, you improperly rated Mr. Bell as your first candidate and recommended that he be hired.

4. Charge II: Granting Preference not Authorized by Law.

a. Specification 1. In July 2008, your placement of Mr. Black as a fifth rated candidate gave him and improper preference over more qualified candidates;

b. Specification 2. In September 2008, your placement of Mr. Black as the second rated candidate gave him and improper preference over more qualified candidates.

c. Specification 3. In October 2009, your recommendation of Mr. Albert Bell as a number one candidate gave him and improper preference over more qualified candidates.

5. In proposing this action I have considered AR 690-700, Chapter 751, Table 1-1, Table of Penalties of Various Offenses. I have charged your conduct in two different charges to fully describe the impact of your conduct. Charge I describes actions that injure the USACIL. Hiring an unqualified person harms the laboratory that is seeking to be the premier forensic investigative laboratory in the United States. Charge II describes how your actions harm others, the better qualified candidates for each position. I would recommend your suspension for either charge.

6. You have the right to reply to this notice of proposed suspension, in person, in writing, or both, and to produce affidavits on your behalf within ten calendar days from the date you receive this memorandum. If you choose to reply, your reply should be directed to Mr. Larry Chelko, Director USACIL, 4930 N 31st Street, Forrest Park, GA 30297-5205. You are permitted to request official time to prepare and present a personal reply; if you wish to do this, you must first contact me and arrange for the time. You may also review all supporting material relied upon by management officials to make this proposal as well as the pertinent civilian personnel regulations pertaining to this action. If you desire to do this, you may contact, Kelly J. Elder, Human Resources Specialist, Fort Gordon, Georgia, Civilian Personnel Advisory Center, telephone (706) 791-3778. Should you need additional time to reply to this proposal, you should submit a request in writing stating your reasons to me.

8. You have the right to a representative of your choosing. If you choose a representative, the designation must be in writing specifying the name, address, and a telephone number for your representative and must authorize your representative to have access to your official records that are relevant to this proposed action. The representative, if an Army employee located at Fort McPherson, is also entitled to official time to assist you in your reply. If you choose to be represented, complete the Designation of Representative form, enclosed, and return it to me.

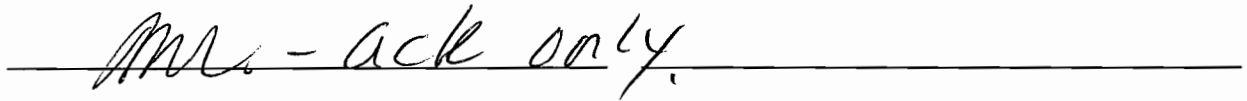
9. If you believe your unacceptable conduct may be caused by personal, physical, or medical problems; substance abuse; and/or other reasons not directly related to the duties of your position, you are advised and strongly encouraged to use the services of the Fort Gordon Employee Assistance Program. This program is designed to assist employees with problems and refer them to sources within the community that offer treatment or rehabilitation. For additional information regarding this service, contact Mr. Michael Reed, at 706-791-5797. You must arrange, in advance, with me, for use of any official time. The confidential counseling/referral services of that office are available to you.

10. You are requested to sign the acknowledgment of this memorandum. Your signature does not forfeit any of your rights described in this memorandum, nor does it indicate agreement with the contents. Your refusal to sign the acknowledgment does not void the contents of this memorandum.



RICHARD E. TONTARSKI
Chief, Forensic Analysis Division

Receipt Acknowledged:



Signature: Donald Mikko

Date

*I do not concur with
anything stated in this
document, this is continual
harassment.*